

quality of service that its customers have come to expect, AT&T must be able to obtain access to the information in Bell Atlantic's operations support systems with no less timeliness, accuracy, or ease of access than that experienced by Bell Atlantic's own personnel.

40. To establish that the access provided by Bell Atlantic is nondiscriminatory, the OSS access provided by Bell Atlantic will have to be monitored to determine whether Bell Atlantic's proposed interfaces actually provide CLECs with access to its systems having an equivalent level of accuracy, reliability and timeliness as the access that Bell Atlantic provides to its own customer service representatives.

41. To establish that Bell Atlantic is providing nondiscriminatory access to its operations support systems, a series of performance measurements and reporting mechanisms for OSS access are needed. Such a measurement plan should embody four criteria: (1) the plan should support statistically valid comparisons of CLEC experience with the experience of Bell Atlantic's own local service operations; (2) the plan must monitor access to operations support systems for each interface as well as at the service level; (3) the plan should account for potential performance variations due to differences in service and activity mix; and (4) the plan must be implemented and producing results which demonstrate that nondiscriminatory access is in fact being delivered across a broad range of resold services and unbundled network elements. To date, however, Bell Atlantic has not agreed to any meaningful measurement plan for comparing the access to operations support systems that it will provide to CLECs with the access that Bell Atlantic provides to itself.

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## **VI. CONCLUSION**

For the foregoing reasons, the Commission should find that Bell Atlantic is not in compliance with its obligation to provide nondiscriminatory access to its operations support systems, and should therefore not support Bell Atlantic's Section 271 application.

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I verify that the foregoing is true and correct to the best of my knowledge and belief. This statement is made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
Robert J. Kirchberger

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**DOCKET# 15118**  
**DOCUMENT# 7253**

GEORGETTE PLANNAGAN  
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TERRI M. LYNDALE  
EXECUTIVE SECRETARY

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MAR 21 1997

**DOCKET NO. 7253-U**

**EXECUTIVE SECRETARY**  
J.B.P.C.

**ORDER REGARDING STATEMENT**

**IN RE: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252 (f) of the Telecommunications Act of 1996**

Statement Filed: January 22, 1997  
Decision: March 20, 1997

**APPEARANCES:**

On Behalf of the Commission Staff

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Tiane L. Sommer

On Behalf of the Consumers' Utility Counsel:

Ken Woods

On Behalf of BellSouth Telecommunications, Inc.

Fred McCallum  
William Ellenberg

On Behalf of AT&T Communications of the Southern States, Inc.

Roxanne Douglas  
Kenneth McNeely  
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Thomas Lemmer

On Behalf of Airtouch Cellular of Georgia

Charles Gerkin

TAB L-1

On Behalf of American Communications Services of Columbus, Inc.:

L. Craig Dowdy  
William Rice

On Behalf of BellSouth Long Distance, Inc.:

Michael S. Bradley

On Behalf of Cable Television Association of Georgia:

James Comerford

On Behalf of Competitive Telecommunications Association:

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On Behalf of Georgia Public Communications Association:

Dean Fuchs

On Behalf of MCI Telecommunications corporation:

David I. Adelman  
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On Behalf of Intermedia Communications, Inc.:

Jonathan Camis

On Behalf of Sprint Communications Company L.P.:

William Atkinson  
Carolyn Roddy

**BY THE COMMISSION:**

The Commission by this Order issues its decision regarding the Statement of Generally Available Terms and Conditions ("Statement" or "SGAT") filed by BellSouth Telecommunications, Inc. ("BellSouth" or "BST") pursuant to Section 252(f) of the Telecommunications Act of 1996 ("Act"). BellSouth's Statement represents a substantial effort to document the interconnection, services, rates, and related items it has made or will make available, consistent with this Commission's previous orders and rulings in arbitration dockets under the Act and other proceedings (primarily Dockets No. 6352-U and 6415-U/6537-U) under both the Act and state law. As discussed herein, however, the Commission concludes that the Statement does not yet fully comply with all of the standards and requirements of Sections 251 and 252(d) of the Act, and therefore should be rejected. This docket shall remain open for review of any revised Statement that BellSouth may submit, in order to address the aspects of the Statement that are currently premature or deficient as discussed in this Order.

Docket No. 7253-U

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I. JURISDICTION AND PROCEEDINGS

A. Jurisdiction

The Commission opened this docket to review the Statement of Generally Available Terms and Conditions ("Statement" or "SGAT") submitted by BellSouth in connection with its expected application to provide in-region interLATA services pursuant to Section 271 of the Act. When BellSouth filed its Statement on January 22, 1997, it triggered a 60-day review process under Section 252(f) of the Act. The Commission may approve or reject the Statement, or simply allow it to take effect pursuant to Section 252(f).<sup>1</sup>

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<sup>1</sup> The Act also permits the Commission to continue review of a Statement if it takes effect following the initial 60-day review period. Section 252(f)(4). The 60-day review period on this Statement concludes March 23, 1997.

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The Commission's review of the Statement is independent of whether BellSouth proceeds to seek in-region interLATA relief under Section 271 of the Act.<sup>2</sup> BellSouth's filing of the Statement is under a separate section of the 1996 Act, Section 252(f), which provides for Commission review within 60 days whether or not BellSouth even proceeds with any application for in-region interLATA entry. The Commission's decision on the Statement pursuant to Section 252(f) is an order by this Commission. By contrast, the Commission's action on BellSouth's application for interLATA entry will be a consultative recommendation to the FCC submitted 20 days after BellSouth's FCC filing, and will not be a "final" or appealable order of this Commission. The schedule for reviewing the Statement in this docket is thus also separate from proceedings related to Section 271.

In reviewing the Statement, the Commission shall apply the standards and requirements of Sections 251 and 252(d) of the Act. In addition, the Commission may apply other requirements of State law, including requiring compliance with intrastate telecommunications service quality standards or requirements, as recognized by Sections 252(e)(3) and (f)(2).

## **B. Procedural History**

The Commission initially established a procedure and schedule for the general review of BellSouth's expected application to the Federal Communications Commission ("FCC") for authorization to provide in-region interLATA services pursuant to Section 271 of the Act. The Act directs the FCC to consult with the applicable State Commission before making a determination with respect to any Bell Operating Company's entry into the interLATA market within the region of its incumbent local exchange services.<sup>3</sup> According to those procedures, established in Docket No. 6863-U, the Commission instructed BST to prefile testimony that specifically addressed and responded to questions concerning competition in the local market raised in Section 271 (c)(2)(B) of the Act.

On January 3, 1997, BellSouth filed in response to the Commission's procedure in Docket No. 6863-U. In addition, BST submitted a preliminary Statement of General Terms and Conditions for this Commission's review pursuant to Section 252(f). BellSouth filed its final version of the Statement of General Terms and Conditions ("Statement" or "SGAT") pursuant to Section 252(f) of the Act on January 22, 1997. The Statement had been modified to conform with subsequent Commission decisions and revised certain rates contained in the preliminary statement.

Due to the substantive differences and independent timetables for the Statement compared with the original proceeding relating to the expected FCC Section 271 application, the Commission

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<sup>2</sup> Therefore, this review is also independent of whether BellSouth seeks Section 271 relief under "Track A" or "Track B" under Section 271(c)(1).

<sup>3</sup> 47 U.S.C. § 271(d)(2)(B).

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divided the proceedings, assigning the new Docket No. 7253-U to this review of the Statement but allowing the two dockets to be heard concurrently.<sup>4</sup>

Notices of Intervention were filed by Access Network Services, Inc. ("ANSI"), AirTouch Cellular of Georgia ("AirTouch"), American Communications Services of Columbus, Inc. ("ACSI"), ATA Communications, LLC ("ATA"), AT&T Communications of the Southern States, Inc. ("AT&T"), BellSouth Long Distance, Inc. ("BSLD"), Cable Television Association of Georgia ("CTAG"), Competitive Telecommunications Association ("CompTel"), Consumers' Utility Counsel ("CUC"), Cox Enterprises ("Cox"), Georgia Public Communications Association, Inc. ("GPCA"), Intermedia Communications, Inc. ("ICI"), LCI International Telecom Corp. ("LCI"), MCI Telecommunications Corporation ("MCI"), MFS Intelnet of Georgia, Inc. ("MFS"), MultiTechnology Services, L.P. ("MTS"), and Sprint Communications Company, L.P. ("Sprint").

The Commission opened the hearings on January 28-31, 1997, taking the testimony of witnesses for BellSouth and BSLD (the latter pertaining to Docket No. 6863-U). On March 3-7 and 10, 1997, the Commission reconvened the hearings and took testimony from the intervening parties, including ANSI, ACSI, AT&T, ICI, MCI, MFS, and Sprint, and rebuttal testimony from BellSouth and BSLD (the latter again pertaining to Docket No. 6863-U).

Under the Act, BST may file a statement of the terms and conditions that are generally available in order to comply with the duties and obligations set forth in Section 251 of the Act.<sup>5</sup> This Commission may not approve the statement unless it complies with Section 251 and the pricing standards for interconnection, network elements, transport and termination of traffic, and wholesale prices set forth in Section 252(d).<sup>6</sup>

The Act also set a definite time frame for the State Commission analysis. Unless the BellSouth agrees to an extension, the Commission must complete review of the statement within 60 days after the date of submission.<sup>7</sup> The statutory deadline for this docket is March 23, 1997.

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<sup>4</sup> Docket No. 7253-U was assigned to this proceeding. In re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions under Section 252(f) of the Telecommunications Act of 1996, on March 5, 1997.

<sup>5</sup> 47 U.S.C. § 251.

<sup>6</sup> 47 U.S.C. § 252 (d).

<sup>7</sup> 47 U.S.C. § 252(f) (3).

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## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Overview

Based on a thorough review of the entire body of evidence presented in the record and consideration of general regulatory policy issues, the Commission finds as a matter of fact and concludes as a matter of law that the Statement should not be approved for the reasons discussed in the following sections of this Order. This docket will be kept open for review of any revised Statement to address those aspects currently premature or deficient, as discussed in this Order.

BellSouth asked the Commission to approve the Statement, and asserted that the Statement would be useful to potential new entrants into the local exchange market who do not have the desire or resources to negotiate interconnection agreements, thereby eliminating this potential hurdle for new entrants. In addition, BST requested that the Commission certify that the access and interconnection generally offered within the Statement meets the requirements of the competitive checklist contained in Section 271(c)(2)(B). However, the Commission agrees with the Consumers' Utility Counsel ("CUC") that the Commission need not make any findings in this docket with respect to Section 271, including whether the SGAT would satisfy the competitive checklist of Section 271(c)(2)(B).

Most of the intervenors asked the Commission to reject the Statement. All of the intervenors asked, either as an alternative to requesting rejection or as their primary request, for the Commission not to approve the Statement but only permit it to take effect, so that the Commission can continue its review under Section 252(f) and modify or reject the Statement at a later date. AT&T and other intervenors countered BellSouth's asserted need for the SGAT by stating that potential new entrants, and the existing CLECs in Georgia, really need BellSouth's actual performance under existing agreements and the requirements of Sections 251 and 252(d). BellSouth did not identify any carrier which had requested that BellSouth file the Statement,<sup>6</sup> and no company lacking an agreement intervened to support BellSouth's proposed Statement.

Several intervenors including MFS and Sprint stated that their time for review of the SGAT was so limited that they were able only to address key issues. However, they added that the SGAT provisions on these key issues are so clearly inconsistent with the requirements of the Act that without more, they demonstrate that the Statement must be rejected.

The Commission finds that the Statement does not conform to pertinent provisions of the Act. The Act requires that a State Commission may not approve a statement unless such statement complies with subsection (d) of Section 252 and Section 251 and the regulations thereunder promulgated by the FCC. This signifies that the Commission's evaluation of the Statement must use a different approach from that used in conducting the arbitrations and approving the interconnection

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<sup>6</sup> Tr. 2981 (BST witness Varner).

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agreements (whether negotiated or arbitrated). Review of an arbitrated agreement merely calls for determining whether its provisions are inconsistent with Sections 251 and 252(d), not whether the agreement addresses every issue which is covered by those sections. In addition, an arbitrated agreement is to be approved if its provisions are not inconsistent with those sections. To approve the Statement, however, the Commission must affirmatively determine that each and every standard and requirement of Sections 251 and 252(d) is actually addressed and that the SGAT's provisions can actually be implemented in a realistic way.<sup>9</sup> This also does not mean that BellSouth must depend upon CLECs actually ordering each item that is "generally offered," in order to prove that each item is functionally available. Instead, if there are items that CLECs have not yet ordered, BellSouth should be able to demonstrate availability through testing procedures.

In other words, the Statement must be comprehensive in order to comply with Sections 251 and 252(d). The Commission's arbitration rulings were directed only to sets of issues as framed by individual parties in four cases (MFS, Docket No. 6759-U; AT&T, Docket No. 6801-U; MCI, Docket No. 6865-U; and Sprint, Docket No. 6958-U). Those issues did not encompass the totality of issues under Sections 251 and 252(d), and in ruling upon what was presented, the Commission did so as an arbitration panel responding within the framework and proposals presented by individual companies. The arbitration decisions also served the limited purpose of determining what the bilateral contracts between disputing parties should provide. Approval of a Statement under Section 252(f) involves much more; it essentially certifies that BellSouth's Statement represents a comprehensive offering that is available to CLECs in compliance with Sections 251 and 252(d).

Moreover, the Statement is not necessary to facilitate the entry of competitive local exchange carriers ("CLECs") into Georgia's local exchange markets. For example, new entrants could rapidly access the provisions of the large number of negotiated and arbitrated interconnection agreements between BellSouth and both large and small CLECs.<sup>10</sup> BellSouth remains free, of course, voluntarily to use its Statement as a representation of its standard offer to CLECs; but it would be premature for this Commission to allow the Statement to have the status of becoming effective under Section 252(f), for the reasons discussed in this Order.

Several CLECs presented evidence that they are proceeding to take steps to implement their interconnection agreements. The Statement also reflects rulings by the Commission in arbitration proceedings, notably those involving AT&T (Docket No. 6801-U) and MCI (Docket No. 6865-U). Portions of the Statement duplicate issues pending before the Commission in its proceeding to establish cost-based rates for interconnection and unbundled network elements (Docket No. 7061-U); as to these matters, the Statement is premature. In addition, the record shows that BellSouth has not

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<sup>9</sup> Compare Section 252(e)(2) (the commission "may only reject" an agreement upon certain findings), with Section 252(f)(2) (the commission "may not approve" the Statement unless it complies with the pertinent standards and requirements).

<sup>10</sup> See, e.g., Statement at 1.

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yet demonstrated that it is able to fulfill important aspects of the Statement's provisions on a nondiscriminatory basis that places CLECs at parity with BellSouth; as to these aspects, it again would be premature to allow the Statement to take effect. The Statement should not be approved so long as BellSouth has not demonstrated that it is able to actually provision the services of interconnection, access to unbundled elements, and other items listed in the Statement and required under Sections 251 and 252(d).<sup>21</sup>

As to the contention that the SGAT helps new entrants, what new entrants, smaller carriers, and all CLECs need is much less a standard offer that takes effect as a Statement under Section 252(f), and much more the actual ability of BellSouth to perform under its existing agreements or a Statement. This does not mean that a Statement is judged by the amount of CLEC activity, but by the ability of BellSouth to actually provide the items offered by the Statement, in compliance with the Act. Until BellSouth is actually able to provide interconnection, cost-based rates not subject to true-up, access to unbundled network elements, electronic interfaces for operational support systems, and the other items required under Sections 251 and 252(d), approval of the Statement would offer no benefit to other carriers. Instead, approval of the Statement under these conditions would be misleading by stating that BellSouth "generally offers" items that are not actually available.

BellSouth recognized that the overall purpose of the Act is to open telecommunications markets to competition. This purpose is served in pertinent part, BellSouth stated, by ensuring that potential entrants to the local exchange market have available to them the set of functions and capabilities to begin providing service, identified in Section 251 of the Act. (BellSouth Brief at 4.) The primary question in this case, however, is whether BellSouth has done its part in making such functions and capabilities available, to date.

BellSouth also argued that the Statement represents the Commission's rulings in arbitration dockets, and therefore meets the requirements of Sections 251 and 252(d). (BellSouth Brief at 5.) This argument overlooks significant differences between an arbitration, and the SGAT. To begin with, the arbitrations were conducted for the specific purpose of resolving disputes between parties over the meaning of provisions within Sections 251 and 252(d), and how they should be applied. The arbitrations did not address, for the most part, whether BellSouth was actually making available unbundled elements (for example) but instead whether certain items such as sub-loop unbundling,

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<sup>21</sup> Some intervenors advanced other objections to the Statement, based on opposition to portions of the Statement that reflect the Commission's decisions in arbitration cases. These include the Commission's ruling that the rebundling or recombination of unbundled network elements, without adding any CLEC facilities, functionalities or capabilities (other than operator services), should be priced and treated as resale under Section 251(c)(4) rather than unbundled elements under Section 251(c)(3); and Commission rulings involving the application of BellSouth tariff restrictions to resale, and resale of contract service arrangements ("CSAs"). These arguments would essentially ask the Commission to reconsider these previous rulings. In light of the Commission's disposition of the Statement on other grounds, the Commission does not engage in such a reconsideration.

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network interface devices, mid-span meets, and dark fiber should be required, and what procedures should apply (for example, for accessing rights-of-way). Thus the arbitration rulings resolved disputes about terms and conditions. However, the arbitrations were for the most part not designed to inquire into whether BellSouth had actually made such items available.

For certain items, the arbitrations did inquire into whether BellSouth had made access actually available. The primary example of this is electronic interfaces as a part of operational support systems ("OSS"). There, it was quite clear that electronic interfaces had not yet been developed, and all the Commission could do was affirm its previous rulings in Docket No. 6352-U that BellSouth and the parties continue the development of such interfaces.

There are some aspects of the SGAT that were not addressed in the arbitrations. The major one, of course, is the pricing for unbundled network elements. The arbitrations did not establish rates for such elements pursuant to Section 252(d). The Commission was unable to determine in the arbitrations what rates would comply with Section 252(d), and therefore established Docket No. 7061-U and made the interim arbitrated rates subject to true-up using whatever rates are established in Docket No. 7061-U. A smaller aspect of the SGAT not addressed in the arbitrations, although not without significance for some CLECs, is the price for dark fiber when provisioned as an unbundled network element; the Commission did not adopt any interim rate for dark fiber in the arbitrations.

In offering a Statement of Generally Available Terms and Conditions, BellSouth is asking the Commission to do something else not addressed in the arbitrations: to approve a "statement of the terms and conditions that such company generally offers" to comply with the requirements of Section 251 and the regulations thereunder, and the standards under Section 252(d). "Generally offering" terms and conditions is meaningless if the offer is on paper only, without the capability to provide the actual service. This was not an issue in the arbitrations, but is an issue under Section 252(f).

The following points represent a summary of the major findings and conclusions in this Order:

- The Statement is not necessary to facilitate the entry of competitive local exchange carriers ("CLECs") into Georgia's local exchange markets.
- The Statement's pricing for interconnection, unbundled network elements, interim number portability, and reciprocal compensation represents interim rates subject to true-up. The cost-based prices for most or all of these items will be established by the Commission in Docket No. 7061-U. Such interim rates subject to true-up are not cost-based under Section 252(d), and as a matter of policy, if not law, should not be sanctioned in a Statement which results in retroactive rate-making.
- The Statement's rates for dark fiber and for access to poles, ducts, conduits, and rights-of-way are also interim rates subject to true-up, and were not taken from the arbitration rulings so there is even less basis to find that such rates meet the cost-based requirements of the Act. Further, one of the unbundled items is directly contrary to a ruling by the Commission in the

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AT&T arbitration, Docket No. 6801-U: the recurring (monthly) charge for end office switching of \$0.0016 should include all features and functions of the switch, rather than impose additional prices for features and functions as the SGAT proposes.

- For unbundled access to network elements and for resale, BellSouth has not yet demonstrated that it is able to provide access to operational support systems ("OSS") on a nondiscriminatory basis that places CLECs at parity with BellSouth.
- The record shows that BellSouth is not yet able to fulfill important aspects of the Statement's provisions for interconnection and unbundled access to network elements on a nondiscriminatory basis that places CLECs at parity with BellSouth. The Commission is concerned that approval of the Statement under current conditions would be misleading, by stating that BellSouth "generally offers" items that are not actually available.
- The Statement does not meet the interconnection requirements of Section 251(c)(2), because BellSouth is not yet providing interconnection including full physical collocation to carriers on a basis (including standards and intervals) that is at least equal in quality to that provided to itself or to a subsidiary.
- BellSouth proposed that intervals and many other aspects of collocation be governed by its Negotiations Handbook. However, that handbook is not part of the SGAT, and it is subject to unilateral change. (Some other aspects of interconnection are to be governed by BellSouth manuals, which again are subject to unilateral change by BellSouth.) In addition, BellSouth is still developing its processes for physical collocation, so the Statement is incomplete as to those processes.
- BellSouth is not yet able to provide certain unbundled loops as requested by new CLECs and the underlying operations support and billing systems on a fully tested and nondiscriminatory basis that provides parity to CLECs.
- The Statement provides little information on how CLECs can actually order switching elements, on the time frames for ordering, or on billing and auditing. The SGAT refers to a document entitled "OLEC-to-BellSouth Ordering Guidelines (Facilities-based)" for information regarding ordering and delivery of unbundled switching. The latter document is not a part of the SGAT.

These points are discussed in further detail in the following sections of this Order.

**B. Interconnection Requirements of Section 251(c)**

Section 251(c)(2) of the Act provides that the duties of an incumbent LEC such as BellSouth include:

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(2) **INTERCONNECTION.** — The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

A closely related topic is collocation, as to which the Act at Section 251(c)(6) provides that BellSouth's duties include:

(6) **COLLOCATION.** — The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

Georgia's Telecommunications and Competition Development Act of 1995 also contains provisions relating to interconnection. O.C.G.A. § 46-5-164(a) provides that all LECs shall permit reasonable interconnection with other certificated LECs, including all or portions of such services as needed to provide local exchange services.

#### 1. Positions of the Parties

BellSouth argued that its Statement complies with the requirements of Section 251, including the Commission's arbitration decisions which applied Section 251 standards for interconnection. According to BellSouth, Section I of the Statement provides for complete and efficient interconnection of requesting telecommunications carriers' facilities and equipment with BellSouth's network. This involves the following components: (1) trunk termination points generally at BellSouth tandems or end offices for the reciprocal exchange of local traffic; (2) trunk directionality allowing the routing of traffic over a single one-way trunk group or a two-way trunk group depending upon the type of traffic; (3) trunk termination through virtual collocation, physical collocation, and interconnection via purchase of facilities from either company by the other company; (4) intermediary

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local tandem switching and transport services for interconnection of CLECs to each other, and (5) interconnection billing.<sup>12</sup>

AT&T, MCI and other intervenors argued that the requirements of Section 251(c)(2) have not been met because, for example, BellSouth has not made physical collocation fully available and numerous technical requirements for physical collocation have not been established. BellSouth placed many of the terms and conditions for collocation in its "Negotiations Handbook," which is not a part of the SGAT and which BellSouth reserves the right to change unilaterally at any time. MCI argued that this is untenable, and further that even if the handbook contains reasonable intervals, no physical collocations have yet been completed so it is unknown whether BellSouth would be successful in meeting such intervals. (MCI Brief at 10.) MCI and Sprint pointed out that BellSouth's processes for implementation of physical collocation are still in a developmental phase.<sup>13</sup>

Many of the intervenors opposed Commission approval of the Statement stating that the evidence demonstrates that it does not comply with Section 251 and 252(d) of the Act. These intervenors added that approval of the Statement would significantly delay the development of local competition. This is because they are concerned that if the Statement is approved and BellSouth subsequently obtains approval from the FCC for in-region interLATA services, BellSouth will no longer have the incentive to do its best in meeting its obligations under Sections 251 and 252(d). The intervenors who advanced this argument included ACSI, ICI, MFS, and MCI.

ICI, MCI, MFS, and others asserted that approving or allowing the SGAT to go into effect is not necessary for new CLECs seeking to enter Georgia's local exchange market, because numerous other negotiated and arbitrated agreements exist from which new entrants can select provisions. Under their view, BellSouth can still offer and new entrants can still accept the rates, terms and conditions contained in BellSouth's Statement simply by voluntarily signing a contract with BellSouth. This would render the Statement essentially a "standardized contract" (ICI Brief at 6) offered by BellSouth, without the added status of "taking effect" under Section 252(f).

AT&T contended that there is insufficient evidence for the Commission to determine that the interconnection offered under the SGAT is at least at parity with the access BellSouth provides itself, as required under Section 251(c)(2). AT&T pointed to the fact that BellSouth has not filed its internal measures of quality, as it was requested to do on the last day of the hearings (March 10, 1997). If and when BST complies with that request, AT&T added, there is no way to determine whether the measures are complete or whether interconnection that is not yet available for use under the Statement will be provided at the same level of quality BellSouth provides itself. The SGAT does not contain quality standards, interval commitments, measures of quality, or incentives associated

<sup>12</sup> BellSouth Brief at 6, citing Tr. 283-90 (BST witness Scheye).

<sup>13</sup> Tr. 2082-83 (AT&T witness Tamplin); Tr. 2427; MCI witness Agatson profiled direct testimony at 13.

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with such items. AT&T also argued that the Commission could not make a finding that the interconnection offered under the SGAT is nondiscriminatory, because BellSouth has yet to file the interconnection agreements it entered into with other incumbent local exchange carriers prior to the Act, and will not do so until June or July, 1997.<sup>14</sup>

With respect to collocation under Section 251(e)(6), AT&T objected that the Statement omits a price for an element which would allow collocated carriers to connect one cage to another. AT&T also objected that the rates for physical collocation are interim rates subject to true-up, and are not cost-based.<sup>15</sup> AT&T and MCI both pointed out that the Statement does not establish any time intervals for physical collocation; such intervals must be negotiated with BellSouth. For instance, physical collocation may take two to four months or longer to provide in some circumstances, but AT&T argued that there is no evidence that BellSouth experiences similar delays and thus that BellSouth has not shown that it can actually provide collocation on a nondiscriminatory basis.<sup>16</sup> AT&T and MCI concluded that for these and the other arguments they advanced, the Commission should reject BellSouth's Statement.

## 2. Commission Decision

The Commission finds and concludes that although BST has entered into numerous interconnection agreements with competing LECs, participated in arbitration proceedings with several carriers, developed ordering procedures for implementing other aspects of the agreements, BellSouth is not yet providing interconnection to carriers that is at least equal in quality to that provided to itself or to a subsidiary. While partial physical collocation has taken place, full physical collocation has not yet occurred and the record shows that BellSouth is still developing its procedures and may not be yet be able to make physical collocation available on a basis equal to the installation of BellSouth's own facilities. In reaching this conclusion, the Commission does not draw upon the problems cited by intervenors that have been experienced in other states. The Commission believes it is appropriate to confine its review only to what is demonstrated in Georgia.

BellSouth proposed that the intervals and many other aspects of collocation be governed by its Negotiations Handbook. However, that handbook is not part of the SGAT, and it is subject to unilateral change.<sup>17</sup> Given that BellSouth is still developing its processes for physical collocation,

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<sup>14</sup> Tr. 423 (BST witness Scheye). The Commission's September 27, 1996 Order in Docket No. 6703-U does not require such pre-Act agreements to be filed until such time.

<sup>15</sup> AT&T Brief at 24-25, citing Tr. 727, 730 (BST witness Scheye).

<sup>16</sup> AT&T Brief at 24-25, citing Tr. 731 (BST witness Scheye).

<sup>17</sup> Tr. 795 (BST witness Scheye).

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BellSouth has not demonstrated that physical collocation is currently actually available as promised by the SGAT and required under Section 251(c)(2).

The record shows that some network elements are not yet available for interconnection, and that BellSouth's provisioning of interconnection under existing agreements has involved significant delays and problems.<sup>18</sup> As early as July, 1996, ICI requested connection to certain BellSouth subloops, and BellSouth had not fulfilled the request as of the time of the hearings in this docket.<sup>19</sup>

To show compliance with the interconnection requirements of Section 251(c)(2), the Statement must be more than a written outline of what BellSouth intends to offer. In order to generally offer interconnection, BellSouth must be able to make it actually available, both technically and operationally.

The reciprocal exchange aspect and other pricing aspects of interconnection are discussed separately in the following section of this Order. As for interconnection billing, there was testimony indicating that BellSouth may not have fully verified its billing systems for use in interconnection and other aspects of billing with CLECs, so it would be appropriate for BellSouth to provide some documentation of its billing system testing in connection with any revised Statement.

### C. Pricing Standards of Sections 251 and 252(d)

Pricing standards are contained within Sections 252 and 252(d) of the Act. Perhaps the primary price-related sections are contained within Section 252(d) with respect to interconnection, unbundled elements, and resale. To begin with, Section 252(d)(1) provides:

(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES. -- Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section --

(A) shall be --

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

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<sup>18</sup> Tr. 745 (BST witness Scheye); Tr. 1773-74 (MFS witness Meade); Tr. 2270-89 (ICI witness Strow); see also profiled direct testimony and cross-examination of ACSI witness Robertson.

<sup>19</sup> Tr. 2887 (ICI witness Strow).

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Georgia's Telecommunications and Competition Development Act of 1995 at O.C.G.A. § 46-5-164(b) provides that the rates, terms, and conditions for interconnection services (which includes unbundled elements) shall not unreasonably discriminate between providers.

Section 251(b)(5) establishes that BellSouth's duties include the following with respect to reciprocal compensation:

(5) RECIPROCAL COMPENSATION. — The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

The pricing standard for such reciprocal compensation is set forth in Section 252(d)(2), as follows:

(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.

(A) IN GENERAL. For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

The pricing standard for resale of local exchange services is provided in Section 252(d)(3), as follows:

(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES. For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

1. Positions of the Parties

BellSouth argued that its Statement complies with the requirements of Section 252(d), in that the interim rates subject to true-up for unbundled elements are those applied by the Commission in arbitration dockets, and the true-up will be according to permanent cost-based rates to be established by the Commission in the cost proceeding, Docket No. 7061-J. BellSouth's Statement offers its tariffed retail telecommunications services for resale to other telecommunications carriers, and outlines specific limitations on resale generally (e.g., prohibition against cross-class selling) and on the resale of specific services (e.g., short-term promotions, grandfathered services, contract service arrangements, etc.). In the Statement, BellSouth offers a wholesale discount of 20.3 percent for residential customers, and 17.3 percent for business services. BellSouth stated that these discounts

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as well as the resale limitations are consistent with the Commission's previous orders.<sup>20</sup> The interim wholesale pricing for resale of services was affirmed in the arbitration rulings, and established by the Commission in Docket No. 6352-U.

BellSouth stated that its reciprocal compensation arrangements are in compliance with Section 252(d)(2), and that the rates for reciprocal transport and termination of local calls are consistent with the requirements of the Act and the Commission's previous Orders.<sup>21</sup>

A primary objection by intervenors was that the interim rates for unbundled elements cannot by definition be cost-based, because the Commission has not yet undertaken its review in the cost study proceeding in Docket No. 7061-U. They pointed out that these rates are not only interim, but are also subject to true-up according to rates that are established in the cost proceeding (Docket No. 7061-U), which both adds to the uncertainty and business risk facing the CLECs, and also proves that the interim rates are not cost-based in compliance with Section 252(d).<sup>22</sup> The intervenors who put forward this argument included AT&T, ICI, MCI, MFS, and Sprint.

MCI argued that Section 252(d)(1) is clearly stated in terms that indicate the present, and are not anticipatory in any way - that the Act simply does not contemplate that its requirements can be met on the basis of future compliance, however near. (MCI Brief at 13.) MCI also objected to the rates, terms and conditions associated with reciprocal compensation for transport and termination, arguing that they must be set in a way that does not reward incumbent carriers for network inefficiencies that they may experience relative to new entrants or punish new entrants for network efficiencies that they may experience relative to the incumbent. MCI argued that the SGAT's reciprocal compensation process is not equitable because it permits BellSouth to bill CLECs for tandem switches used to terminate calls from CLEC customers, but does not permit CLECs to bill BellSouth for the use of CLECs' switches performing the same functionality and covering the same geographic scope as BellSouth's tandems.<sup>23</sup>

In addition, AT&T and ICI pointed out that the Statement's rates for dark fiber were not based upon the Commission's rulings in the arbitration dockets; this is because the parties in those dockets did not propose, and the Commission did not establish rates for dark fiber in those

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<sup>20</sup> BellSouth Brief at 11-12, citing Tr. 351-56 (BST witness Scheye).

<sup>21</sup> BellSouth Brief at 11, citing Tr. 350-51 (BST witness Scheye).

<sup>22</sup> MCI witness Wood, prefiled direct testimony at 14; AT&T witness Winegard, prefiled direct testimony at 20; AT&T witness Gullan, prefiled direct testimony ("[m]ost of the pricing provisions set forth in Attachment A [to the SGAT] have not yet been found by the Commission to satisfy Section 252(d), and therefore, cannot meet the checklist.").

<sup>23</sup> MCI Brief at 29-30, citing Tr. 2641-42, 2777-78, MCI witness Wood's prefiled direct testimony.

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proceedings. AT&T objected that prices set at tariffed rates cannot be accepted as cost-based rates pursuant to Section 252(d). ICI contended that BellSouth has thus not attempted to make a showing that these rates meet the pricing standard under Section 252(d)(1) of the Act.

AT&T also objected to the monthly charge of \$0.0016 for end office switching, which the SGAT states does not include retail services.<sup>24</sup> This qualification was not adopted by the Commission in the AT&T arbitration,<sup>25</sup> and AT&T also argued that it is contrary to FCC Rules which require that end office switching must include all features and functionality of the switch, including those needed to provide retail vertical service.

The Consumers' Utility Counsel argued that this docket is not the proper forum to revisit the Commission's arbitration rulings on the topics of geographic deaveraging, "rebundling" or "network platform" pricing issues, or whether contract service arrangements ("CSAs") should be sold at a discounted price to CLECs for resale. The CUC added that the Commission should not await access reform by the FCC or the reductions in intrastate access charges mandated by O.C.G.A. § 46-5-166(f) before reaching its decision regarding the Statement. (CUC Brief at 5.)

## 2. Commission Decision

With respect to the pricing of interconnection, unbundled network elements, reciprocal compensation, and access to poles, ducts, conduits, and rights-of-way, the Commission notes that it has initiated a docket for the purpose of establishing cost-based rates that will no longer be subject to true-up. That docket may also be used for establishing cost-based rates for interim number portability. The Commission has granted BellSouth's requests for an extension of time to file its proposed cost studies and rates in that docket.<sup>26</sup> It is unreasonable to expect that this Commission can approve the Statement and pricing arrangements as cost-based, as required by the Act, when the determinations as to a reasonable cost basis have yet to be made.<sup>27</sup> Accordingly, until the Commission has established the cost-based rates for interconnection including collocation, for unbundled elements, for reciprocal compensation, and for access to poles, ducts, conduits, and rights-of-way, pursuant to Sections 251 and 252(d), which can be used for BellSouth's SGAT, the Commission must reject the SGAT.

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<sup>24</sup> Tr. 826 (BST witness Scheye).

<sup>25</sup> Tr. 827 (BST witness Scheye).

<sup>26</sup> At the time of this Order, BellSouth had been granted its request for an additional 30-day extension of time in order to file its proposed cost studies and rates by April 30, 1997.

<sup>27</sup> The Commission also notes that the Eighth Circuit has not yet issued its decision regarding the pricing and other provisions of the FCC's First Report and Order. That decision could have a significant impact on the actual standards by which to judge a Statement.

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The Commission does not make light of the interim rates established in the arbitrations. However, as the Commission expressed in its arbitration rulings, determining cost-based rates is not a light undertaking and neither the parties nor the Commission had the benefit in the arbitrations of a searching evaluation of the cost studies and methodologies underlying the parties' proposed rates. Therefore the Commission moved quickly to establish the cost study proceeding in Docket No. 7061-U, although the Commission has subsequently granted BellSouth's requests for extension of time to compile data and revise cost study models to use an open, non-proprietary format.

The Statement's interim prices for interconnection including collocation, for unbundled elements, and for reciprocal compensation for transport and termination are taken from the Commission's rulings in arbitration dockets involving MFS (Docket No. 6759-U), AT&T (Docket No. 6801-U), and MCI (Docket No. 6865-U). In those rulings, issued by the Commission acting as an arbitration panel under Section 252(e), the Commission refrained from adopting any particular methodology or approving any cost study. For those very reasons, the Commission initiated the cost proceeding in Docket No. 7061-U. Thus, the Commission did not adopt those rates as cost-based rates under Section 252(d), and so the Commission adopted the true-up mechanism linked to cost study proceeding in Docket No. 7061-U.<sup>28</sup>

The true-up mechanism was acceptable for the arbitration rulings because those rulings addressed contractual disputes between two private parties, with the Commission acting as the arbitration panel under Section 252(e). However, a true-up mechanism is not appropriate for a statement of generally available terms and conditions under Section 252(f). Approval in a Statement of generally available rates that are interim and subject to true-up based upon subsequent proceedings appears equivalent to retroactive ratemaking. As a matter of policy, if not law,<sup>29</sup> a Statement that takes effect with the imprimatur of state and federal law should not provide for generally available rates that change retroactively.

The Commission also agrees with ICI that the Statement's rates for dark fiber were not taken from the arbitration rulings, and thus there is even less reason to find that such rates meet the cost-based requirement of Section 252(d)(1). In addition, BellSouth's witness Mr. Scheye agreed that some of the rates for network elements listed in Tab 2 of the Statement do not represent any form

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<sup>28</sup> Thus the status of the interim rates for interconnection including collocation, for unbundled elements, and for transport and termination is different from that of the interim pricing for resale of BellSouth's retail services. While the wholesale discount was established for the interim and is intended to be reviewed in a subsequent proceeding for purposes of a permanent discount, at least the interim discount was intended to be consistent with the pricing standard of Section 252(d)(3). Furthermore, the interim wholesale discount is not subject to a true-up reconciling the interim with any permanent discount.

<sup>29</sup> See O.C.G.A. § 46-2-25(d); see also Commission Rule 515-2-1-.03.

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of total element long-run incremental cost ("TELRIC") pricing,<sup>30</sup> thus it has not been established that such items have been priced in compliance with Section 252(d). Further, one of the unbundled items is directly contrary to a ruling by the Commission in the AT&T arbitration, Docket No. 6801-U: the recurring (monthly) charge for end office switching of \$0.0016 should include all features and functions of the switch, rather than impose additional prices for features and functions as the SGAT proposes.<sup>31</sup>

**D. Other Requirements of Sections 251(b) and (c)**

Section 251 contains various requirements in addition to the interconnection requirements (discussed previously) under Section 251(c)(2). One of these is the requirement under Section 251(c)(3) that incumbent LECs provide unbundled access to network elements. Specifically, Section 251(c)(3) provides that the duties of incumbent LECs include:

(3) UNBUNDLED ACCESS. — The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Georgia's Telecommunications and Competition Development Act of 1995 also contains provisions relating to unbundled network elements. O.C.G.A. § 46-5-164(d) provides:

(d) Such interconnection services shall be provided for intrastate services on an unbundled basis similar to that required by the FCC for services under the FCC's jurisdiction.

All LECs have a duty to provide nondiscriminatory access to poles, ducts, conduits and rights of way, pursuant to Section 251(b)(4), as follows:

(4) ACCESS TO RIGHTS-OF-WAY. — The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of

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<sup>30</sup> Tr. 720.

<sup>31</sup> This was discussed in the Commission's February 26, 1997 Order Denying Motion for Rehearing in the AT&T arbitration, Docket No. 6801-U.

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telecommunications services on rates, terms, and conditions that are consistent with section 224.

Local exchange companies also have the duty to provide dialing parity under Section 251(b)(3), as follows:

(3) **DIALING PARITY.** – The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

Section 251(b)(2) describes BellSouth's duty with respect to number portability as:

(2) **NUMBER PORTABILITY.** – The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

Each LEC has the following duty with respect to resale of its services, under Section 251(b)(1):

(1) **RESALE.** – The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

In addition, incumbent LECs such as BellSouth have additional duties with respect to resale, pursuant to Section 251(c)(4), as follows:

(4) **RESALE.** – The duty –

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Similarly, BellSouth as a company that has elected alternative regulation under Georgia's Telecommunications and Competition Development Act of 1995 has the obligation to allow resale of its services, under O.C.G.A. § 46-5-169(7).

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## **I. Positions of the Parties**

BellSouth argued that its Statement complies with the requirements of Section 251, including the Commission's arbitration decisions which applied Section 251 standards. According to BellSouth, its Statement provides nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under just and reasonable rates, terms, and conditions, including collocation, operations support systems ("OSS"), the provision of dark fiber, and other unbundled elements. The Statement also contains a Bona Fide Request process to facilitate requests by any new entrant for interconnection or unbundled capabilities not included in the Statement.<sup>32</sup>

As to operational support systems (OSS), BellSouth stated that it has already spent a considerable amount of time and resources developing interfaces and related systems, in compliance with the Commission's previous orders in Docket No. 6352-U and the arbitration decisions. BellSouth also contended that the "web" interface projected to be available on March 31, 1997 will provide sufficient functionality for CLECs to access the services they need.

BellSouth stated that Section III of the Statement offers access to poles, ducts, conduits, and rights-of-way via a standard license agreement, consistent with the Commission's previous orders.<sup>33</sup>

For local loops, BellSouth stated that Section IV offers several loop types: 2-wire, 4-wire voice grade analog, 2-wire ISDN, 2-wire and 4-wire Asymmetrical Digital Subscriber Line ("ADSL"), 4-wire High-bit-rate Digital Subscriber Line, and 4-wire DS1 digital grade. Other loop types not identified in the Statement may be obtained pursuant to the Bona Fide Request Process. In addition, the Statement provides for loop distribution, loop cross connects, loop concentration, and access to Network Interface Devices ("NIDs"). BellSouth asserted that its provisioning of unbundled loops and additional local loop transmission components, as well as the rates for these items, are consistent with the Commission's previous orders.<sup>34</sup>

Local transport from the trunk side of a wireline local exchange carrier switch, unbundled from switching or other services, is covered by Section V of the Statement. BellSouth stated that this offers unbundled local transport with optional channelization from the trunk side of its switch, and that it offers both dedicated and common transport including DS0 channels, DS1 channels in conjunction with central office multiplexing or concentration, and DS1 or DS3 transport. Again,

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<sup>32</sup> BellSouth Brief at 6-7, citing Tr. 290-302 (BST witness Scheye).

<sup>33</sup> BellSouth Brief at 7, citing Tr. 302-04 (BST witness Scheye).

<sup>34</sup> BellSouth Brief at 7, citing Tr. 304-10 (BST witness Scheye).

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